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TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

OCTOBER TERM, 1892.

No. 24.

IN THE MATTER OF THE APPLICATION OF A. K. GARDINER & BRO. CONCERNING CERTAIN IMPORTATIONS OF MERCHANDISE BY THEM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED

(Endorsed:) Service of a copy of the within is hereby admitted. N. Y., August 19, 1889. (S'g'd) Evarts, Choate & Beaman, att'ys for def't-.

(File-mark:) U. S. circuit court. Filed Sept. 24, 1889. John A. Shields, clerk.

47 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-six, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Georgia Infirmary for the Relief and Protection of Aged and Afflicted Negroes against Harriet Cazenove Jones and Frank Cazenove Jones, as adm'rs, with the will annexed, of Gazaway B. Lamar, deceased, as the same remain of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the said United States the one hundred and fourteenth.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 13,727. S. New York C. C. U. S. No. 146. The Georgia Infirmary for the Relief and Protection of Aged and Afflicted Negroes, appellant, *vs.* Harriet Cazenove Jones and Frank Cazenove Jones, administrators, with the will annexed, of the estate of Gazaway B. Lamar, deceased. Filed October 11, 1889.

1340 149 U 8774

TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

OCTOBER TERM, 1892.

No. 24.

IN THE MATTER OF THE APPLICATION OF A. K. GARDINER & BRO. CONCERNING CERTAIN IMPORTATIONS OF MERCHANDISE BY THEM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 United States Circuit Court for the Southern District of New York.

In the Matter of The Application of A. K. GARDINER & BRO. on Certain Merchandise Imported by Them and Entered by the "City of Chicago," which Arrived October 4, 1890.	No. 409.

To the circuit court of the United States for the southern district of New York:

The petitioners above named allege that they are now and at the times hereinafter named were copartners doing business under the firm name of A. K. Gardiner & Bro., said firm being composed of Arthur K. Gardiner and Clement E. Gardiner.

That under such firm name they imported and entered at the port of New York certain merchandise, described in the schedule hereto annexed, at the times therein mentioned.

That thereafter the collector at that port proceeded to ascertain, fix and liquidate the rate and the amount of the duties to be
2 paid on said merchandise, under the provisions of an alleged act of Congress entitled "An act to reduce the revenue and equalize duties on imports and for other purposes," and purporting to be approved on October 1, 1890, which rate and amount was in excess of the rate and amount required by law to be paid thereon, under statutes in force prior to October 1, 1890.

That your petitioners being dissatisfied with the rate and amount so fixed, and within ten days after said determination of said collector, but not before said ascertainment and liquidation of duties, gave notice in writing to the collector, setting forth therein distinctly and specifically in respect to each entry and payment the reasons for their objections thereto, and paid the full amount of the duties and charges ascertained to be due thereon.

That thereafter the collector transmitted the invoice and all the papers and exhibits connected therewith to the board of general appraisers, who, within the past thirty days and on the dates set forth in said schedule, returned that they had examined and decided as to the said entries and affirmed the decision of said collector.

That your petitioners are dissatisfied with said decision of said board as to the construction of the law and the facts respecting the classification of said merchandise and the rate of duty imposed thereon, and the following is a concise statement of the errors of law and fact complained of.

The errors of fact were as follows:

1. In holding that the alleged act of Congress, entitled "An act to reduce the revenue and equalize duties on imports and for other purposes," and purporting to be approved October 1, 1890, ever passed the House of Representatives and Senate in manner and form as it now appears of record in the Department of State.

2. In holding that the bill, entitled as above, which passed
3 the House of Representatives and Senate, was ever presented to the President, as required by the Constitution, or was ever signed or approved by him.

3. In holding that the said "City of Chicago" did not arrive in the port of New York and within this collection district with intent to unload her cargo on October 4, 1890, and in holding that the below-mentioned merchandise which arrived by said vessel was not imported into the United States and within this collection district prior to the 6th day of October, 1890, and in holding that the entry of the vessel upon which said importation was made previous to October 6, 1890, was not an entry of the merchandise within the act of October 1, 1890, section 50.

4. In refusing to hold that it was officially declared that the business of the custom-house would be suspended and the building closed at 3 o'clock p. m. on the 4th day of October, 1890, and that business at the custom-house was so suspended and the main doors of the building closed at 3 o'clock p. m. on said day, and that your petitioners were thereby prevented from making entry of their said merchandise under the laws in force on said day, viz: Section 2502 of the U. S. Revised Statutes, as amended by section 6 of the act of March 3, 1883, and that we were further discriminated against by the fact that business at the custom-house was resumed at a later hour and the doors opened and entries of vessels and merchandise received by the collector from other importers who had received notice that they would be permitted to make entry and whose goods were passed at the rates of duty accruing or free of duty, as provided by the act of March 3, 1883, above referred to.

The errors of law were as follows:

1. In holding that the alleged act of 1890 is not unconstitutional and void by reason of the third section thereof.

4 2. That the alleged act of 1890 is not unconstitutional and void by reason of the provisions contained in section one and Schedule E and paragraph 231 of said act relating to bounties on sugar.

3. In holding that said act had been passed by the Senate and House of Representatives and signed by the President in accordance with the Constitution.

4. In holding that the merchandise in said entry and invoice referred to is dutiable under the alleged act of October 1, 1890, instead of being dutiable under the statutes in force prior to October 6th, 1890, viz: As glue at 20 per centum ad valorem, under Schedule A of act of March 3, 1883.

5. Further errors of law were in said board refusing to hold as follows:

(*a*) That said merchandise by the "City of Chicago" was imported into the United States and was within this collection district previous to the going into effect of the act of October 1st, 1890, and duties at the rates provided by law existing prior thereto accrued on said merchandise upon arrival of the importing vessel with intent to unlade within the collection district.

(*b*) That the entry of the vessel upon which said importation was made previous to October 6th, 1890, was an entry of the merchandise within the terms of the act of October 1, 1890, section 50.

(*c*) That the right to import said merchandise previous to October 6, 1890, and to pass the same through the customs at rates established by laws existing prior to the taking effect of the act of October 1st, 1890, is provided for by the act of March 3rd, 1883, and expressly conceded by section 29 of the act of June 10th, 1890, and provisions of section 55 of the act of October 1st, 1890, and the arrival of the importing vessel with intent to unlode within the collection district, being an act done within the provisions of the act of 1883, section 29 of the act of June 10th and section 55 of the act of October 1st, 1890, the right to receive said goods at rates of duty no greater than those provided by laws existing and in force before the going into effect of the act of October 1st, 1890, is a right accruing and accrued under said acts and continuing until the finality of all proceedings connected with the importation of said goods and the passage of the same through the customs have been determined.

Also generally that the question of rate of duty on said goods is within the reservation clause of said section 55 of the act of October 1, 1890.

That the following is a schedule of the importations embraced in this petition, viz:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.
1. Glue	"City of Chicago"	1890. Arrived on Oct. 4.	1890. Dec. 8.	1891. Feb. 26.

Wherefore your petitioners pray that the said circuit court review the questions of law and fact involved in the decision of the said board of general appraisers, heretofore made in each of the above matters as to the classification and rate of duty assessed upon said merchandise, and for that purpose pray that an order may be entered requiring the said board of general appraisers to return to said circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in each of the above matters and their decisions thereon.

And your petitioners further pray for such additional orders and relief under the statutes of the United States in such cases made and provided, as they may in the judgment of court be entitled to.

6–8 Dated, New York, March 26, 1891.

A. K. GARDINER & BRO., *Petitioners*,
By STANLEY, CLARKE & SMITH, *Attorneys*.

* * * * * * *

9 & 10 At a stated term of the United States circuit court, for the southern district of New York, held at the United States court and post-office building, in the city of New York, on the 27th day of March, 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of The Application of A. K. GARDINER & BRO. on Certain Merchandise Imported by Them and Entered by the "City of Chicago," which Arrived October 4, 1890.	409.

Upon reading and filing the petition and application herein, dated the 26th day of March, A. D. 1891, and upon motion of Stanley, Clarke & Smith, attorneys for the petitioners, it is

Ordered that the board of general appraisers at the port of New York return to this court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decisions thereon, respecting the dutiable classification of the merchandise embraced in said petition and application, and the rate of duty imposed thereon, viz:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.
1. Glue	"City of Chicago"	1890. Arrived on Oct. 4.	1890. Dec. 8.	1891. Feb. 26.

E. HENRY LACOMBE,
U. S. Circuit Judge.

* * * * * * *

11 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of A. K. GARDINER & BROTHER on Certain Merchandise Imported by Them and Entered by the "City of Chicago," which Arrived October 4, 1890.	Suit No. 409.

Return of the board of United States general appraisers to the order of Hon. E. Henry Lacombe. Dated New York, May 9th, 1891.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that on the 26th day of December, 1890, a letter dated December 22, 1890, a copy of which is hereto annexed and marked Exhibit "A," was received from the collector of customs at New York, submitting under the provisions of sec. 14 of the act of June 10, 1890, the protest described and marked as follows: (Exhibit "B.")

Collector's No.	Board No.	Protester.	Vessel.	Date of entry.
17139	3455A	A. K. Gardiner & Bro.	"C. of Chicago."	October 6, '90. "B."

12 H. E. E. J. J.

EXHIBIT "A."

CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *Dec.* 22, 1890.

Hon. board of U. S. gen'l appraisers, New York.

GENTLEMEN: In pursuance of the requirements of sec. 14, act of June 10, 1890, I transmit herewith the protests of S. Ascher, No. 16730; A. K. Gardiner & Bro., No. 17139, (3455A) and others, from the assessment of duty as made by this office on certain "worsteds," "linens," and "embroideries," "India-rubber toys," "cotton and silk goods," and other merchandise imported by them in the vessels named, claiming that the vessels arrived in this port prior to October 6, '90, and hence the goods are dutiable under the provisions of the act of March 3, 1883.

I have to state that the goods were entered for consumption or for warehouse on Oct. 6, 7, 8, and 9, respectively, and duty was accordingly assessed thereon, under the provisions of the tariff act of Oct. 1st, 1890, and in accordance with the first section of said act.

The entries and invoices covered by the above protest are enclosed herewith.

The naval officer concurs in the decision of this office.

Respectfully yours, J. J. COUCH,
Special Deputy Collector.

(82 encl.)

13 EXHIBIT "B."

NEW YORK, *December* 8, 1890.

Hon. J. B. Erhardt, collector of customs.

SIR: We hereby protest against your decision and the rate and amount of duties assessed by you on our importation of glue S. (G.) A. C 8584–8597 50 bags, per str. "City of Chicago," which arrived October 4th, 1890, and entered at the custom-house on that day;

entry No. 162,464; duty paid October 6, 1890; entry liquidated November 28, 1890.

We claim said merchandise to be dutiable at 20 per centum ad valorem, under provisions of Schedule A of act of March 3, 1883, as glue, and not at 1½ cents per pound as assessed by you.

Because it was officially declared that the business of the custom-house would be suspended, and the building closed at three o'clock, p. m., on the 4th day of October, 1890, and business at the custom-house was so suspended, and the main doors of the building closed at three o'clock, p. m., on said day, and we were thereby prevented from making entry of our merchandise under the laws in force on said day, viz: Section 2502 of the U. S. Revised Statutes, as amended by section 6 of the act of March 3, 1883; and we were further discriminated against by the fact that business at the custom-house was resumed at a later hour, and the doors opened and entries of vessels and merchandise received by the collector from other importers who had received notice that they would be permitted to make entry, and whose goods were passed at the rates of duty accruing or free of duty as provided by the act of March 3, 1883, above referred to.

And we further protest separately upon each of the following grounds:

14&15 1st. Because said merchandise was imported into the United States and was within this collection district previous to the going into effect of the act of October 1st, 1890, and duties at the rates provided by law existing prior thereto accrued on said merchandise upon arrival of the importing vessel with intent to unlade within the collection district; and

2nd. Because the entry of the vessel upon which said importation was made previous to Oct. 6th, 1890, was an entry of the merchandise within the terms of the act of October 2, 1890, section 50; and

3rd. Because the right to import said merchandise previous to October 6, 1890, and to pass the same through the customs at rates established by laws existing prior to the taking effect of the act of October 1st, 1890, is provided for by the act of March 3rd, 1883, and expressly conceded by section 29 of the act of June 10th, 1890, and provisions of section 55 of the act of October 1st, 1890, and the arrival of the importing vessel with intent to unlade within the collection district being an act done within the provisions of the act of 1883, section 29 of the act of June 10th and section 55 of the act of October 1st, 1890, the right to receive said goods at rates of duty no greater than those provided by laws existing and in force before the going into effect of the act of October 1st, 1890, is a right accruing and accrued under said acts and continuing until the finality of all proceedings connected with the importation of said goods and the passage of the same through the customs have been determined;

Also generally that the question of rate of duty on said goods is within the reservation clause of said section 55 of the act of October 1, 1890.

* * * * * * *

16 We pay said duties under compulsion and to obtain possession of our goods, and claim refund of the sum exacted in excess of the duty legally accruing.

Respectfully, A. K. GARDINER & BRO.,
By GEO. W. WRIGHT, *Att'y.*

* * * * * * *

17 That on the 26th day of February, 1891, the board of general appraisers rendered its decision in the matter of said protest No. $\frac{3455A}{17139}$, a copy of which is hereto annexed, marked Exhibit "C."

Copies of the board's former decisions, G. A. Nos. 129, 172, and 203, referred to in their decision covering the before-mentioned protest, are also hereto attached, marked Exhibit "D," "E" and "F." The other G. A. Nos. referred to have no reference to the particular protest and are consequently not returned.

EXHIBIT "C." J. B. W., Jr.

In replying, refer to
3411A, &c.
J. R. L.

Office of the board of U. S. general appraisers, 534 Canal street, New York.

FEBRUARY 26, 1891.

Collector of customs, New York.

SIR: Your decisions as to the rates and amount of duties chargeable on certain merchandise imported in the vessels named, and assessed with duties under the acts of June 10th, and October 1, 1890, being in accordance with the decisions of the board of general appraisers, dated October 13th, and 22nd, November 21st, and December 4th and 15th, 1890, Nos. G. A. 57, 71, 129, 172, and 203, is hereby affirmed on the protests described in the accompanying schedule, which were received with your letters of various dates.

18 The invoices and entries received with your letters are herewith returned.

Respectfully yours, GEO. C. TICHENOR,
J. B. WILKINSON, JR.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

(110 enc. & schedule, 3 sheets.)

EXHIBIT "D."

(10479.—G. A. 129.)

Act of October 1, 1890. Application to goods unentered October 6.

NEW YORK, *November* 21, 1890.

Before the board of United States general appraisers, at New York, November 15, 1890.

In the Matter of the Protest 2016*b*, of S. & B. Lederer, against the Action of the Collector of Providence, R. I., in Assessing Duty on Certain Jewelry under the Tariff Act of October 1, 1890.

Opinion by Wilkinson, General Appraiser.

The collector reports that as the merchandise was not entered until after October 6, duty was assessed at the rate of 50 per cent. ad valorem, provided in Schedule N, paragraph 452, act of October 1, 1890.

Appellants claim classification at 25 per cent. under the tariff of March 3, 1883, on the ground that the goods reached New York on the steamship "Gallia," prior to October 6. The enacting
19 clause of the tariff of 1890 provides, that on and after October 6, certain duties shall be levied on goods imported from foreign countries. According to the construction commonly placed on previous tariff legislation, "imported" into the United States means "arriving" in the United States, and but for a provision in the body of the act, articles arriving in the United States prior to October 6, would not be liable to the duties prescribed in the act.

This limitation is found in section 50, which provides that on and after October 6, "all goods, wares and merchandise, previously imported, for which no entry has been made, and all goods, wares and merchandise, previously entered without payment of duty, and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or withdrawal thereof, than if the same were imported respectively after that day." In our judgment, the most reasonable interpretation of this clause is that such goods shall be liable to duties neither higher nor lower than the rates prescribed in this act and, consequently, shall pay the duties prescribed in the act.

The decision of the collector is, therefore, sustained.

20 EXHIBIT "E."

(10522.—G. A. 172.)

Closing of custom-houses on Sunday.

NEW YORK, *December* 4, 1890.

Before the board of United States general appraisers, at New York, December 4, 1890.

In the Matter of the Protest, No. 2167*b*, of Messrs. John D. & M. Williams, against the Rate of Duty Assessed by the Collector of Customs at Boston, on Certain Gin Imported per Navarro, October 6, 1890.

Opinion by Stackpole, General Appraiser.

The steamer Navarro arrived at the port of Boston, on Sunday, October 5. Messrs. J D. & M. Williams, who were the consignees of certain gin on board her, offered to enter this gin on that day, and were ready with the requisite papers, and prepared to pay the duty legally due thereon. Such entry, however, was refused at the custom-house, and the gin entered on the succeeding day, Monday, October 6, and duty assessed thereon under the provisions of the law of October 1, which went into effect that day.

The importer contends that the refusal of the collector to receive his entry on Sunday was not justified by law, and that therefore, duty as existing prior to the new law should be assessed. Admitting this contention to be well founded, it raises the question whether the closing of the custom-house and refusal to accept entries on Sunday was in accordance with law.

Under paragraph 221 of the Revised Statutes of the United
21–28 States, "the Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors * * * as he shall deem best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss. * * * He shall give such directions to collectors, and prescribe such rules and forms to be observed by them, as may be necessary for the proper execution of the law." Among the regulations issued by the Secretary is the following:

Article 1499. Custom-houses shall be kept open for business on all days of the year, except Sundays, Independence, Christmas, and New Year's days, and such other days as may be designated by law, or by the President of the United States, or by the Secretary of the Treasury.

We think the regulation a reasonable and valid one, under the authority given by Congress. It is in accordance with the legislation of the several States in which the custom-houses are situated, and with public sentiment and morality. The doing of business in

the Federal offices on Sunday, in communities where other secular business is suspended would be offensive to such sentiment, and it is but just that an opportunity to attend divine worship and for rest, should be given to the employees of the Government.

It seems that in this case entry of the vessel itself was accepted, and that the deputy collector was present in the custom-house. We do not deem these circumstances material to this case. The question is one of legal right on the part of the importer. The disregard or waiving of a regulation by an officer of the customs in one instance would not confer the right on the importer to insist upon a similar concession contrary to the general regulations.

The protest is overruled.

* * * * * * *

29 And for a certified statement of the facts involved in said matter, as ascertained by them, the board of general appraisers state that they find as follows:

1st. That the petitioners imported fifty bags of glue by the steamer "City of Chicago," from Liverpool, which arrived in the lower bay of the harbor and in the collection district of the port of New York, on Saturday, the 4th day of October, 1890, at about 6 o'clock in the afternoon of that day.

2nd. That the master of said "City of Chicago" left with the collector of said port a written verified report of the arrival of said vessel, and of the fifty bags of glue of the petitioners thereon, and made due entry of the said vessel in the custom-house, in New York, on Saturday, the 4th day of October, 1890, at about 6 o'clock in the afternoon, and said report and entry contained all the particulars required by law to be inserted in a manifest, or to be in such report and entry.

3rd. That such written report of the vessel and her cargo has been known since the year 1789 by the officers of the customs and importers of this country as an entry of the ship.

4th. That prior to the 4th of October, 1890, it had been officially declared by the Government and it was a well-known official regulation, that business would be suspended and the custom-house closed at three o'clock, p. m., of each Saturday.

5th. That on said 4th of October, 1890, the doors of the custom-house were open, and business therein continued until twelve o'clock midnight, and entries of merchandise were made at the rates of duty accruing under the act of March 3, 1883.

30–32 Said board states that no other facts were ascertained by said board than such as are shown by said decisions and other exhibits hereto attached.

GEO. C. TICHENOR,
J. B. WILKINSON, JR.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

* * * * * * *

33 United States Circuit Court, Southern District of New York.

In the Matter of The Application of A. K. GARDINER & BRO., Concerning Certain Merchandise Imported by the "City of Chicago" October 4, 1890. } No. 409.

To the circuit court of the United States for the southern district of New York:

The undersigned, a general appraiser, under the act of June 10, 1890, to whom it was referred by this honorable court, by an order made May 19, 1890, to take further evidence in the above-entitled matter, do- hereby return such further evidence taken by me pursuant to such order.

Dated New York, July 2, 1891.

GEORGE H. SHARPE,
United States General Appraiser, as an Officer of the Court.

THOMAS J. DUNN, sworn and examined as a witness for the importer.

By Mr. CLARKE:

Q. What is your occupation?

A. Chief clerk and acting deputy collector of the marine division of the custom-house.

Q. How long have you been in that position?

A. Five years.

34 Q. When a vessel arrives in the port of New York, what is the practice at the custom-house, and what was it in October last and prior thereto, in respect to her making a report and making an entry and delivering a manifest of the goods on board of that vessel?

Objected to as immaterial.

A. Within forty-eight hours after arrival within the port, the law requires the master of the vessel to present himself with a manifest of the goods on board his vessel and make oath at the custom-house to the correctness thereof.

Q. And that is the practice as well as the law?

A. It is.

Q. Do you know anything in respect to the arrival of the steamship "City of Chicago," in October last?

A. Nothing more than that she arrived, and the vessel was entered that afternoon, October 4th.

Q. You know that she did arrive in the port of New York on the 4th day of October last?

A. Yes, sir.

Q. And the entry was made?

A. Entry was made at the custom-house at half past five o'clock that afternoon. I have the manifest here and the master's oath upon entrance at that time. (Witness producing paper.)

Q. You have brought this paper from the custom-house?
A. Yes, sir.
Q. And from an inspection of that paper you are able to say that this entry was made at half past five o'clock on the afternoon of the 4th day of October last?
A. Yes, sir; you will find my check on the paper.
Q. And this was the paper then presented?
A. Yes, sir.

Mr. CLARKE: I will offer this paper in evidence.

(Marked Exhibit 1, June 9, 1891.)

35 Q. In the course of business at the custom-house, after this entry and manifest is presented with the oath of the captain, what is done with the manifest?

Objected to as immaterial.

A. It is recorded in our division and sent up to the auditor's division, to be recorded in the department of liquidation of vessels. After a comparison is made with the officer's return, it is filed in the record room.
Q. What do you mean by the officer's return?
A. The return of the officer who discharges the vessel—his report.
Q. After the captain takes this oath that is attached to the manifest here, does he sign any other paper at the time?
A. No, sir.
Q. Does he sign any books?
A. No, sir. He signs the oath to the passenger manifest. That has nothing to do with them, though. That is another manifest.
Q. Are any orders in respect to the unloading of the vessel issued in your division?
A. We issue a general order, and in vessels of this kind they have an immediate order to go to work and discharge immediately.
Q. Upon receiving this manifest you issue a general order for the discharge of the cargo?
A. Yes, sir.
Q. Have you a copy of that here?
A. No, sir.
Q. I see there are various marks and remarks in blue pencil on this paper. Were those on when it was presented, or were they put on in the custom-house?
A. They are the marks of the examining officer in checking off this manifest. They are put on after the vessel is discharged. This is checked off with the officer's return, to see that the report of the officer agrees with the manifest of the master.

(The further examination of this witness is suspended for the present.)

36 CHARLES H. HEYZER, sworn and examined as a witness for the importer.

By Mr. CLARKE:

Q. What is your business?

A. I am in charge of the liquidation of vessels' accounts of the custom-house at New York, in the auditor's division.

Q. How long have you been in the auditor's division?

A. About 14 years.

Q. In the course of business at the custom-house do you receive such papers as Exhibit 1?

A. Yes, sir. They come from the first division of our department.

Q. That first division is the marine division?

A. Yes, sir.

Q. When they get to your department what do you do?

A. They are endorsed in this form. (Indicating.)

Q. In what form?

A. They are stamped: "British Steamship City of Chicago," and then follows the master's name and the date on which the vessel arrived, and that is entered in what we term the tonnage book.

Q. Go on and state all that is done in reference to it.

A. After that the manifest is returned to the examining clerk, who compares the officer's return with this, and then the officer's return and this are again returned to the auditor's department.

Q. And what is done there then?

A. Then the clerks of the bureau of the liquidation of the vessels' account collect all the entries connected with this ship and compare the same with the officer's return and see that all the cases, numbers, marks, etc., occurring there agree with the officer's return that has been presented, or the disposition of such goods of which no entries have been made.

Q. The officer's return, to which you refer, is the report of the discharging officer who has charge of the ship?

A. Yes, sir.

37 Q. Which return gives the mark and number of every package that comes off the vessel?

A. Yes, sir.

Q. And that return, with the entry of the vessel's manifest which you have in your hand, together with the individual entries of the goods, are all compared?

A. Yes, sir.

Q. And that process is known as the liquidation of the vessel?

A. The process is known as the liquidation of the vessel's account. All accounts are gone over and it is a practical auditing of the whole affair.

Q. And is there a term in use in the custom-house known as the closing of the vessel?

A. Yes, sir; that is in my department.

Q. What does that mean?

A. That means the closing of these accounts, which means saying

that all the entries have been made, and what goods are remaining for which no entry has been made are returned to the sale account for sale.

Q. In other words, every package of goods stated upon that manifest accompanying the entry of the vessel has to be accounted for?

A. That I do not say. Every package of the officer's return has to be accounted for.

Q. Every package on the officer's return has to be accounted for?

A. Yes, sir.

Q. And that officer's return should agree with the manifest?

A. That is a question for the marine division to decide; that is to say, statements are made upon this manifest as to why those goods are not reported; as for instance, in the case of short shipments, post entries are made.

Q. But the point is that every package upon that manifest, in some shape, either by the officer's return, or in some other way, should be accounted for?

A. Yes, sir.

Q. And if it arrives here in that vessel, it has to be then accounted for by entry or being sent for sale as unclaimed, or something of that sort?

A. Yes, sir.

38 Q. And that in general terms is the liquidation of the vessel's account?

A. Yes, sir.

Q. And that manifest entry is supposed to contain an account of all the goods upon the vessel?

A. That I cannot say. The officer's return covers all the goods upon that vessel.

Q. But the manifest should also?

A. Yes, sir; it is supposed to.

Cross-examination by Mr. PLATT:

Q. When were the vessel's account liquidated in this case?

A. They were liquidated in this case thirteen months afterwards.

Redirect examination by Mr. CLARKE:

Q. That is the usual price, isn't it?

A. Yes, sir; merchants have one year for general order goods.

Q. They may delay one year?

A. They may.

Q. The custom-house delays one year?

A. No, sir; merchants have one year in general-order goods—that is to say, goods that have been drawn under general order. They need not pay the duty upon them or take them out until eleven months afterwards; but they must take them out within the year, or the liquidation department forces them to sale.

Q. Then you do delay before you check off the vessel to see what goods are left in the general order?

A. Yes, sir.

THOMAS J. DUNN, recalled on behalf of the importer.

By Mr. CLARKE:

Q. A general order was issued up on the entry of this vessel, the "City of Chicago"?
A. I think so.
Q. Have you got it with you?
A. No, sir; I have not.
Q. Can you furnish us a copy of it?
A. Yes, sir.
39 Q. Will you do so?
A. Yes, sir; I will.

It is consented that a certified copy of the general order referred to may be handed in by the witness, and marked Exhibit No. 2 of this date.

(The general order referred to is appended, and is marked Exhibit 2, of June 9, 1891.)

Cross-examination by Mr. PLATT:

Q. What is your particular position in the custom-house?
A. Chief clerk and deputy collector.
Q. Of what division?
A. The first—marine division.
Q. You have charge of the entry of vessels?
A. Yes, sir.
Q. You have nothing to do with the entering of merchandise?
A. No, sir.

Redirect examination by Mr. CLARKE:

Q. You mean that you have nothing to do with the individual entries of merchandise for the payment of duty?
A. Yes, sir; that is what I mean.

JOHN G. VOORHEES, a witness sworn for the importer.

By Mr. CLARKE:

Q. What is your business?
A. Custom-house broker.
Q. And you have been a custom-house broker for many years?
A. Yes, sir; I have.
Q. Do you know the importers in this case, A. K. Gardiner & Bros.?
A. I do; I do business for them.
Q. Do you remember about the arrival of the "City of Chicago," on the 4th of October last?
A. I do.
Q. Did Messrs. A. K. Gardiner & Bro. have any goods upon that vessel?
A. They did. They had a shipment of glue.

40 Q. Did you, on Saturday, in respect to making an entry and paying duty upon those goods for Messrs. A. K. Gardiner & Bro., go to the custom-house?

A. The vessel was reported but not entered at the custom-house up to the time of closing the custom-house, which was 3 o'clock.

Q. Was the custom-house actually closed at that time?

Objected to as immaterial.

A. It was closed at 3 o'clock, and it was reopened in the neighborhood of 4 o'clock, the exact hour I can't state.

Q. What did you do in respect to making an entry?

A. I sent word to the firm of A. K. Gardiner & Bro., that the vessel was reported, and that I did not know whether the custom-house would be kept open or not, because they were unable to inform me at the custom-house, and they were discussing that matter in the custom-house at the time. So I sent word to A. K. Gardiner & Bro., that I would ascertain and would send them word later. So when I found the custom-house closed, I sent word to Messrs. A. K. Gardiner & Bro., that the custom-house was closed. I then went over to my office, and I learned a few moments after 4 o'clock that the custom-house doors had been opened and I immediately sent word to the office of A. K. Gardiner & Bro., but only one of the members of the firm was in town at the time, and he had just gone to his home.

Q. He had been previously at the custom-house in order to make the entry, had he?

A. Yes, sir; he had been at the custom-house, but I could not make my entry of the goods, of course, until the vessel was entered at the custom-house, and when the custom-house was closed at 3 o'clock, he left and went home, and I went to my office. Then it might have been 15 or 20 minutes past four that I heard that the custom-house had been reopened, and I then sent word to
41 the firm, and my messenger came back with the information that Mr. Gardiner had left for his home out on Long island.

Cross-examination waived.

Testimony closed.

Rev. Stats., secs. 2880, 2966.

(EXHIBIT 2, June 9, '91.) J. C. D.

N. Y. Cat. No. 467.

General Order to Send Merchandise to Public Stores.

G. O.
Oct. 6, 9 a. m.

CUSTOM-HOUSE, PORT OF NEW YORK,
D. J. COLLECTOR'S OFFICE, *Oct.* 4, 1890.

The inspector on board the S. S. "City of Chicago," Redford, master, from Liverpool, will allow to be landed, and will send to

the public store, No. 151–165 Leroy St., and Jersey City stores, all merchandise for which no permit or order shall have been received by him contrary to this direction, except perishable articles, gunpowder and explosive substances, and neat-cattle, except hog products of Denmark and Sweden, which he will retain on board and send notice thereof to this office. He may allow to be landed potatoes or green fruit, provided a general permit to retain cargo on wharf be produced to him. The usual weighing, gauging and measuring to be done before sending goods under this order.

(Signed) JOHN H. GUNNER,
Deputy Collector.

42 Entered 5.30.
Oct. 4.
(Signed) JAS. D. ANDREWS,
For Naval Officer.

(Ed. 11, 12, '89—10,000.)

43 N. R.
J. C. D.

(Endorsed:) Port of New York, June 9, 1891, collector's office. I hereby certify the within to be a true copy of the original on file in this office. John H. Gunner, deputy collector. (Seal.)

(Endorsed:) No. 409. *In re* A. K. Gardiner & Bro. U. S. circuit court. Filed June 2, 1891. John A. Shields, clerk.

43 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 23d day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Present—The Honorable Hoyt H. Wheeler, judge.

In the Matter of the Application of A. K. GARDINER & BRO. on Certain Merchandise Imported by them and Entered by the "City of Chicago," which Arrived October 4, 1890. } No. 409.

The above matter having come on for hearing and determination before this court on the 12th day of January, 1892, on the application of A. K. Gardiner & Brother, on the record and proceedings herein, and on the return of the board of general appraisers, of the record and the evidence taken by them with their certified statement of the facts involved therein, together with their decision thereon:

Now, after hearing Stephen G. Clarke, Esq., on behalf of A. K. Gardiner & Brother, for reversal, and Henry C. Platt, Esq., assistant U. S. district attorney, in opposition thereto, for affirmance, and due consideration having been had,

44 It is found that the said merchandise was upon the S. S. "City of Chicago," which vessel arrived in the port of New York, within this collection district, on October 4th, 1890, with intent to unload her cargo.

It is ordered, adjudged and decreed, that no other or different rate of duty should be exacted upon said imported merchandise than that provided for in the act of March 3, 1883, and the decision of the board of appraisers is hereby reversed.

HOYT H. WHEELER.

* * * * * * *

45 *In Re* A. K. GARDINER & BRO. No. 409.

Opinion.

WHEELER, *J.:*

The tariff act of October 1, 1890, provides that on and after October 6, 1890, specified duties shall be collected upon articles imported from foreign countries; and that on and after that day articles previously imported, for which no entry has been made, shall be subjected to no other duty than if imported after that day. This importation came on a vessel which arrived and was entered with a manifest on Saturday, October 4; these goods were entered on Monday, October 6; and the rate of duty provided for in this act, which is higher than that of the former law, has been imposed and this appeal taken. The question is whether the goods are liable to the rate of this act.

The provision that goods imported and not entered before October 6 shall be subjected to no other duty than as if imported after that day, is not any express enactment that they shall be liable to the same duty as if imported after that day. Such an one would have made the act take effect on the importation of the goods instead of on that day. The same section provides that goods in bond prior to the passage of the act may be withdrawn for consumption at any time before February following, on payment of duties at the rate before in force. This is not consistent with increasing the rate of duty on goods imported before the act took effect. The intention rather than the letter of the act is to be followed. Hartranft
46 *vs.* Oliver, 125 U. S., 525. The prior act was not repealed to expire when this was passed or to take effect; and but for this clause the former rate would apply to this importation. The words, "no other duty" may apply to no other rate of duty, and the provision that the goods shall not be subjected to any other duty may mean that they shall not be more burdened than with that duty, or not liable to any higher rate of duty. Some duties were raised, some lowered, and some repealed. The intention seems to have been to provide that none should be increased till that act took effect, on goods imported before. An intention to increase duties on goods imported after the importation ought to clearly appear. It does not so appear here.

Decision of board of appraisers reversed.

* * * * * * *

47 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of The Application of A. K. GARDINER & BRO. on Certain Mer-handise Imported by Them and Entered by the "City of Chicago," which Arrived October 4, 1890. } No. 409.

Assignment of Errors.

The United States hereby assigns error to the decision or decree of the circuit court of the United States, for the southern district of New York, in the above-entitled case, as follows:

First. In that it ordered, adjudged and decreed that no other or different rate of duty should be exacted upon said imported merchandise than that provided for in the act of March 3, 1883.

Second. In that it ordered, adjudged and decreed that the decision of the board of general appraisers therein be reversed.

Third. In that it did not order, adjudge, and decree that the decision of the board of general appraisers be affirmed.

Dated, New York, February 5th, 1892.

EDW'D MITCHELL,
U. S. Attorney on Behalf of The United States, Appellant,
Room 50, P. O. Building, New York City, N. Y.

* * * * * * *

48 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of The Application of A. K. GARDINER & BRO. on Certain Merchandise Imported by Them and Entered by the "City of Chicago," which Arrived October 4, 1890. } Suit No. 409.

Joinder in Error.

Arthur K. Gardiner and Clement E. Gardiner come into court and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid. And they pray that the said circuit court of appeals may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment afore-
49 said in form aforesaid given, may be in all things affirmed.

STANLEY, CLARKE & SMITH,
Attorneys for A. K. Gardiner & Bro., Appellees.

* * * * * * *

50 United States Circuit Court, Southern District of New York.

In the Matter of The Application of A. K. GARDINER & BRO. as to Certain Importations per "City of Chicago" October 4, 1890.	Suit No. 409.

Please take notice, that the undersigned, on behalf of the collector of the port of New York, and on the part of the United States, hereby appeals from the decision of this court, rendered herein, and entered on the 23rd day of January, 1892, to the United States circuit court of appeals, for the second circuit.

Dated, New York, February 5th, 1892.

Yours, &c., EDWARD MITCHELL,
U. S. District Attorney for the Southern District of N. Y.,
Room 50, Post Office Building, New York City.

To John A. Shields, Esq., clerk, and Stanley, Clarke & Smith, Esqs., attorneys for importers.

* * * * * * *

51 United States Circuit Court of Appeals for the Second Circuit.

In the Matter of The Application of A. K. GARDINER & BRO. as to Certain Importations per "City of Chicago" Oct. 4, 1890.	Suit No. 409.

To the United States circuit court of appeals for the second circuit:

The Attorney General of the United States hereby applies for the allowance of an appeal to the United States circuit court of appeals, for the second circuit, from the decision and judgment of the U. S. circuit court, rendered herein, on the 23rd day of January, 1892.

Dated, February 5th, 1892.

W. H. H. MILLER,
Attorney General,
Per EDW'D MITCHELL, *U. S. Att'y.*

The foregoing application is granted and appeal allowed.

Dated, New York, February 5, 1892.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

* * * * * * *

52 UNITED STATES OF AMERICA, *ss:*

To A. K. Gardiner & Bro., importers:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals, for the second circuit, at

the city of New York, on the 2nd day of March, 1892, pursuant to an appeal on the part of the United States, filed in the clerk's office of the circuit court of the United States, for the southern district of New York, in a certain suit or proceeding entitled "In the matter of the application of A. K. Gardiner & Bro., as to certain importations, per 'City of Chicago,' Oct. 4, 1890, (409)" to show cause, if any there be, why the decision of the U. S. circuit court, in the said appeal mentioned, should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, on the 5th day of February, 1892.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

EDWARD MITCHELL,
U. S. District Attorney, on Behalf of The United States, Appellant.

* * * * * * *

53 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the foregoing pages, numbered from one to fifty inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the matter of the application as to A. K. Gardiner & Bro., as to certain merchandise imported by them, and entered by the "City of Chicago," which arrived October 4, 1890, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this second day [SEAL.] of March, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the said United States the one hundred and sixteenth.

JOHN A. SHIELDS, *Clerk.*

54 United States Circuit Court of Appeals for the Second Circuit.

No. 24. October Term, 1892.

Submitted December 13, 1892. Decided February 7, 1893.

In the Matter of The Application of A. K. GARDINER & BRO., Concerning Certain Importations of Merchandise by Them.	Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe, and Shipman.

The importers, A. K. Gardiner & Bro., imported fifty bags of glue by the steamer "City of Chicago," from Liverpool, which vessel arrived in the port of New York, on Saturday, Oct. 4, 1890. The master of the vessel reported her arrival to the collector and made oath to his manifest, in the usual form on that day. The goods were entered for consumption on October 6th, 1890. Under the tariff act of 1883, the rate of duty on glue of the kind imported was 20% ad valorem; under the act of 1890, it was one and one-half cents per pound. The collector exacted duty at the latter rate, against which the importers duly protested. The board of U. S. general appraisers affirmed the decision of the collector, but, on appeal to the U. S. circuit court, their decision was reversed, and the goods held to be dutiable under the old act. Appeal was duly taken to this court.

55 LACOMBE, *Circuit Judge:*

The tariff act of 1890 was approved by the President, Oct. 1st. It is a long act, containing upwards of fifty sections, not only providing for rates of duty on imported articles, but legislating also as to internal revenue taxes, and as to many details of administration connected with the collection of such duties and taxes. The first section provides, as follows: "On and after the sixth day of October, 1890, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed." Then follows a long enumeration of articles. As to some of these articles it is provided in the same section, that the prescribed duty is not to be levied until some other date named therein, *e. g.*, July 1st, 1891 (par. 143); Oct. 1st, 1897 (par. 143); July 1st, 1893 (par. 209); March 1st, 1891 (par. 219); April 1st, 1891 (par. 241), &c., &c. The second section provides as follows: "On and after the sixth day of October, 1890, unless otherwise specially provided for in this act, the following articles, when imported, shall be exempt from duty," and then follows a long enumeration.

The fiftieth section provides as follows: "On and after the day when this act shall go into effect, all goods, wares and merchandise,

previously imported, for which no entry has been made, and all goods, wares and merchandise previously entered without payment of duty, and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or withdrawal thereof than if the same were imported respectively after that day; provided, that any imported merchandise deposited in bond in any public or private bonded warehouse, having been so deposited prior to the first day of October, 1890, may be withdrawn for consumption at any time prior to
56 February 1st, 1891, upon payment of duties at the rates in force prior to the passage of this act."

The contention of the appellee that the so-called "entry of the vessel" and filing of her manifest was an entry within the meaning of this section is unsound. It is an entry of the "goods, wares and merchandise," that is provided for, and none such had been even commenced by the presentation in the collector's office of the written entry required by sec. 2785, U. S. Revised Statutes, prior to Oct. 6th, 1890. The circuit court so held, finding the goods to be in the class covered by the first part of sec. 50, but holding further that the phrase "shall be subjected to no other duty than if the same were imported after that day," was not intended by Congress to require the payment of duty at the higher rate prescribed by the new act for goods imported on and after Oct. 6th, 1890. We are unable to concur in this construction, in view of the plain language of the statute. To provide that goods in one category shall pay "no other duty" than goods in another category, is but the statement that they shall pay "the same duty;" and any different construction does violence to the language in which Congress has expressed its intention. It has undoubtedly been held (Church of the Holy Trinity *vs.* U. S., 143 U. S., 457), that words may be thus wrenched from their obvious meaning, when a court is satisfied by sufficient evidence that the framers of the act meant, not what they said, but its opposite; but such an extreme application of the doctrine of construction is not to be made, where, as in this case, there is no such evidence.

The respondent, however, seeks to sustain the decision of the circuit court upon another ground. The date named in the fiftieth section (above quoted), relative to which the merchandise therein referred to is to be liable to duty, is "the day when this act shall go into effect." Inasmuch as the act was passed Oct. 1st, 1890, respondent contends that the section should be so construed as not to cover goods imported subsequent to Oct. 1st. Only in a general
57 sense, however, may the act be said to go into effect on the day of its passage. As to the levying, collecting and payment of duties upon imported merchandise, it did not go into effect until Oct. 6th, and as to some kinds of merchandise not until even later dates. Inasmuch as the fiftieth section deals exclusively with the levying, collecting and payment of duties, a natural construction of the language used would determine the precise date expressed by the phrase "the day when this act shall go into effect,"

by the going into effect of the act touching the subject-matter with which the section is wholly concerned.

An analysis of the section lends support to this construction. If interpreted, as the appellees contend, the act would (by that and other sections) provide for duty as follows:

1. On goods imported and entered prior to Oct. 6th	The old rate.
2. On goods imported and entered after Oct. 6th	The new rate.
3. On goods imported prior to Oct. 1st, but not entered prior to Oct. 6th	The new rate.
4. On goods imported subsequent to Oct. 1st, but prior to Oct. 6th, and not entered prior to Oct. 6th	The old rate.

It is difficult to see, why merchandise included in the fourth of these categories, should be privileged over merchandise included in the third.

The judgment of the circuit court should be reversed and case remanded to that court, with instructions to affirm the decision of the board of U. S. general appraisers.

Henry C. Platt, assistant United States attorney, for the United States, appellant.

Edwin B. Smith, for the appellees.

58 At a stated term of the United States circuit court of appeals for the second circuit held at the United States court-rooms, in the city of New York, on the 18th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Wm. J. Wallace, E. Henry Lacombe, Nathaniel Shipman, circuit judges.

In the Matter of the Application of A. K. GARDINER & BRO. on Certain Merchandise Imported by Them and Entered by the City of Chicago October 4, 1890.

The appeal from a decision of the circuit court of the United States for the southern district of New York made herein on the 5th day of February, 1892, having come on to be heard, and due deliberation having been had thereon—

59 Now, on motion of Edward Mitchell, U. S. attorney, of counsel for The United States, appellant, it is

Ordered that the decision aforesaid be, and the same hereby is, in all things reversed; and it is further

Ordered that the United States recover judgment herein; and it is also

Ordered that a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to

proceed in accordance with the said determination of this court herein.

W. J. W.
E. H. L.

Assented to.
EDWIN B. SMITH,
Att'y for Appellees.
EDW'D MITCHELL,
U. S. Att'y.

60 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, John A. Shields, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from one to fifty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of A. K. Gardiner & Bro. as to certain merchandise imported by them and entered by the "City of Chicago," which arrived October 4, 1890, as the same remain of record and on file in said office.

Seal United States Circuit Court of Appeals, Second Circuit.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-three and of the Independence of the United States the one hundred and seventeenth.

JOHN A. SHIELDS, *Clerk.*

61 Supreme Court of the United States, October Term, 1892.

ARTHUR K. GARDINER *et al.*, Petitioners, etc., } No. —.
against
THE UNITED STATES. }

To the Attorney General of the United States:

You will please take notice that it is the purpose of the petitioners to omit in printing the below-indicated portions of the record as entirely immaterial upon the present petition and not at all affecting any issue or question heard or determined in the courts below, to wit:

(1.) The indorsement of filing upon the petition and application to the United States circuit court. (See page 6 of printed case below.)

(2.) The bond (and endorsements thereon) given upon such application to the circuit court. (Pages 7 and 8 of case below.)

(3.) The notice and indorsement upon the order of the circuit court to the board of general appraisers. (Page 10, case below.)

(4.) That portion of petitioners' protest which relates to the alleged unconstitutionality of the act of Oct. 1, 1890, that subject having been determined by the Supreme Court, the clauses to be omitted extending from the second line from bottom of page 14 of printed case (" We further notify," etc.) to the statement at the end of protest, page 16, folio 47, " We pay said duties," etc.; also to omit the endorsement upon the protest.

(5.) The whole of Exhibit F, extending from pages 22 to 28 (inclusive) of printed case, relating exclusively to the question of the constitutionality of the act of Oct. 1, 1890.

(6.) The filing indorsement upon the statement of facts found by the board of general appraisers. (Page 30 of printed case below.)

(7.) The order of reference and its indorsement. (Whole of page 31.)

(8.) The statement of appearances before referee. (Whole of page 32.)

62 (9.) Filing endorsement upon judgment of the circuit court. (Page 44.)

(10.) Same, upon Judge Wheeler's opinion. (Page 46.)

(11.) Same, upon assignment of errors. (Top of page 48.)

(12.) Same, upon joinder in error. (Near top of page 49.)

(13.) Same, upon notice of appeal. (Pages 50 and 51.)

(14.) Same, upon allowance of appeal. (Page 52, top.)

(15.) Same, upon citation. (Page 53, top.)

If you dissent from any of the foregoing omissions you will please indicate such of the matter above mentioned as you desire to have printed.

Washington, April 24, 1893.

EDWIN B. SMITH,
Of Counsel for the Petitioners.

An examination of the papers convinces me that the parts mentioned in this notice are in no way necessary to the presentation or consideration of the questions involved, and consent is therefore hereby expressed to their omission on the part of the United States.

CHARLES H. ALDRICH,
Solicitor General.

Office Supreme Court U. S.
FILED.
MAY 1 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

No......

Ex parte: IN THE MATTER OF ARTHUR K. GARDINER AND CLEMENT E. GARDINER, AS PARTNERS, DOING BUSINESS UNDER THE FIRM-NAME OF A. K. GARDINER & BRO., PETITIONERS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

EDWIN B. SMITH,
Counsel for Petitioners.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No.

IN THE MATTER OF CERTAIN IMPORTATIONS OF MERCHANDISE MADE BY A. K. GARDINER & BROTHER, PER "CITY OF CHICAGO," OCTOBER 4, 1890.

Petition for Writ of Certiorari.

To the Honorable the Supreme Court of the United States:

The petition of Arthur K. Gardiner and Clement E. Gardiner, as partners doing business in the city of New York under the firm name of A. K. Gardiner and Brother, respectfully shows—

That as such firm they imported into New York, on the fourth day of October, 1890, certain merchandise on board the steamship "City of Chicago," which vessel was entered at the custom-house of the port of New York upon that day, and a manifest of all her cargo, including your petitioners' goods, was then deposited in said custom-house and a permit to land said goods was then issued; that the custom-house was closed at 3 p. m. of that day (being Saturday), so that your petitioners were unable to make particular entry of their said goods on that day, though an effort was made

to do so shortly after the hour named. The custom-house was opened again about four o'clock, but this fact was not known to your petitioners until the following Monday (October 6, 1892), upon which last-named day entry was made by your petitioners of their particular goods and the duty thereon paid; that the collector assessed duty upon fifty bags of glue of your petitioners, so imported and entered as aforesaid, at one and a half cents per pound, under Schedule A of the act of October 1, 1890 (26 Stats., 568, par. 27), which assessment was paid by your petitioners under protest, the ground of protest being that said glue was not dutiable under said act of 1890, but under Schedule A of the act of March 3, 1883, at twenty per centum ad valorem. (22 Stats., 491, bottom.)

Your petitioners' said protest and the issues relating to their said importation were referred to the United States board of general appraisers, who thereafterwards affirmed the action and assessment of the collector relative thereto; and thereupon application was made in due form to the circuit court of the United States for the southern district of New York for a review of the action of the said board of general appraisers in the premises, alleging errors of law and fact in the proceedings of the United States board of general appraisers respecting the classification of said goods and the rate of duty imposed thereon, among other errors these being assigned:

In holding that the said "City of Chicago" did not arrive in the port of New York and within this collection district with intent to unload her cargo on October 4, 1890, and in holding that the below-mentioned merchandise which arrived by said vessel was not imported into the United States and within this collection district prior to the 6th day of October, 1890, and in holding that the entry of the vessel upon which said importation was made previous to October 6, 1890, was not an entry of the merchandise within the act of October 1, 1890, section 50.

In refusing to hold that it was officially declared that the

business of the custom-house would be suspended and the building closed at 3 o'clock p. m. on the 4th day of October, 1890, and that business at the custom-house was so suspended and the main doors of the building closed at 3 o'clock p. m. on said day, and that your petitioners were thereby prevented from making entry of their said merchandise under the laws in force on said day, viz: Section 2502 of the U. S. Revised Statutes, as amended by section 6 of the act of March 3, 1883, and that we were further discriminated against by the fact that business at the custom-house was resumed at a later hour and the doors opened and entries of vessels and merchandise received by the collector from other importers who had received notice that they would be permitted to make entry and whose goods were passed at the rates of duty accruing or free of duty, as provided by the act of March 3, 1883, above referred to.

In holding that the merchandise in said entry and invoice referred to is dutiable under the alleged act of October 1, 1890, instead of being dutiable under the statutes in force prior to October 6, 1890, viz., as glue at 20 *per centum ad valorem* under Schedule A of act of March 3, 1883.

And in refusing to hold—

That said merchandise by the "City of Chicago" was imported into the United States and was within this collection district previous to the going into effect of the act of October 1, 1890, and duties at the rates provided by law existing prior thereto accrued on said merchandise upon arrival of the importing vessel with intent to unlade within the collection district.

That the entry of the vessel upon which said importation was made previous to October 6, 1890, was an entry of the merchandise within the terms of the act of October 1, 1890, section 50.

That the right to import said merchandise previous to October 6, 1890, and to pass the same through the customs at rates established by laws existing prior to the taking effect of the act of October 1, 1890, is provided for by the act of March 3, 1883, and expressly conceded by section 29 of the act of June 10, 1890, and provisions of section 55 of the act of October 1, 1890, and the arrival of the importing vessel with intent to unlade within the collection district being an act done within the provisions of the act of 1883, section 29 of the act of June 10 and section 55 of the act of

October 1, 1890, the right to receive said goods at rates of duty no greater than those provided by laws existing and in force before the going into effect of the act of October 1, 1890, is a right accruing and accrued under said acts and continuing until the finality of all proceedings connected with the importation of said goods and the passage of the same through the customs have been determined.

Also generally that the question of rate of duty on said goods is within the reservation clause of said section 55 of the act of October 1, 1890.

Thereupon, and upon order therefor, a return was made by said board of general appraisers to said circuit court of the record and evidence before said board, and further evidence was thereupon taken and presented to said circuit court; and upon the whole record and evidence, after hearing the cause, said circuit court reversed the decision of said United States board of general appraisers, and it was thereupon ordered, adjudged, and decreed by said circuit court—

"that no other or different rate of duty should be exacted upon said imported merchandise than that provided for in the act of March 3, 1883, and the decision of the board of appraisers is hereby reversed."

Thereupon an appeal was taken by and in behalf of the Attorney General of the United States from said judgment of the said circuit court to the United States circuit court of appeals for the second circuit; and the cause and appeal being thereafter heard in said last-named court, the aforesaid judgment of the said circuit court was reversed by said United States circuit court of appeals, and final judgment ordered and recovered in favor of the United States.

Your petitioners respectfully represent that there was manifest error in the rendition of the said judgment of said United States circuit court of appeals for the second circuit, in holding your petitioners' said importations liable to any other, greater, or different duty than that prescribed by the act of March 3, 1883, and in ordering and directing judg-

ment in said cause in favor of the United States; that the question presented in this case is not merely personal to your petitioners, but is "a class case," affecting a large number of persons and importations and involving a large sum of money in the aggregate and extending in its effects to the several ports of entry throughout the country; that it is one of that class of cases in which (prior to the act of March 3, 1891) an appeal was allowed irrespective of the amount involved and within the principle of Revised Statutes, section 707, allowing appeals from the Court of Claims, and that the right of review "by certiorari or otherwise" assured to this Supreme Court of the United States under said act of March 3, 1892, § 6, was designed to secure a supervision over and uniformity of decision in such class cases.

And your petitioners further respectfully represent that the determination and judgment aforesaid of said United States circuit court of appeals for the second circuit was rendered, contrary to long-established rules of construction and to decisions in this Court and in the several circuit courts heretofore made, relative to the date of importation and the date upon which statutes go into effect, and that said United States circuit court of appeals misapprehended a recent decision of this Court as declaring that words may be "wrenched from their obvious meaning when the Court is satisfied by sufficient evidence that the framers of the act meant not what they said, but its opposite;" that the misapprehension and misapplication of the decision referred to is a continuing source of error and erroneous conclusions in the revenue causes to which it is misapplied.

And your petitioners, being without further remedy in the premises, now respectfully present this their petition, accompanied by a certified copy of the record in said cause and also copies of the briefs filed by the complainant and respondent therein, and pray that a writ of certiorari issue out of this Court, directed to the said United States circuit

court of appeals for the second circuit, requiring said circuit court of appeals to certify said case to this Court for its review and determination, or that this Court will "otherwise, in such manner and form as it may direct and determine, review the proceedings and judgment in this case and take such action therein as to it justice may seem to require."

And your petitioners will ever pray, etc.

ARTHUR K. GARDINER.

EDWIN B. SMITH,
120 *Broadway, New York, of Counsel.*

STATE OF NEW YORK,
City and County of New York, } ss:

Arthur K. Gardiner, being duly sworn, deposes and says that he is a member of the above-mentioned firm of A. K. Gardiner & Brother, the petitioners in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the same is true.

Subscribed and sworn to before me this 22d day of April, A. D. 1893.

GEO. W. WRIGHT,
[SEAL.] *Notary Public.*